

B **BLACK**
W **WOMEN**
O **ORGANIZED**
R **FOR ACTION**

STATEMENT TO THE CALIFORNIA FAIR EMPLOYMENT PRACTICE
COMMISSION ON THE PROPOSED GUIDELINES: DISCRIMINATION
BASED ON SEX, APRIL 17, 1974, SAN FRANCISCO

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Thank you for the opportunity to present the views of Black Women Organized for Action on the crucial matter of the proposed guidelines of the FEPC for eliminating discrimination in employment based on sex. Our experience with the early days of the Equal Employment Opportunity Commission in Washington, D.C. makes us understand clearly how important the tone and attitude of the Commission are in ensuring that employers, unions and employment agencies will take seriously the prohibitions against unlawful sex discrimination. The entire nation has suffered and the cause of equality of opportunity for women and men has been unnecessarily delayed because some of the Commissioners and some of the staff of the early EEOC days chose to treat the subject with levity.

It is also important that the FEPC establish the concept that the "bona fide occupational qualification" exemption will be interpreted very narrowly---that virtually all jobs will be presumed to be open and available for women and men. We would suggest, for example, that the emphasis be changed in several sections as indicated in the following comments:

1. Section II: Bona Fide Occupational Qualification

The wording in the first sentence should be changed to read "Under these guidelines discrimination by sex is unlawful unless it results from a bona fide occupational qualification essential to the normal operation of the employer's business."

The second paragraph of this section should also be revised to delete "examination of the facts reveals" from the third sentence. The comment

is unnecessary and tends to soften the impact of the "narrow" interpretation of the "bfoq" concept.

On p. 2 of the guidelines, we would recommend changes in the sections dealing with situations in which sex may be a bona fide occupational qualification. We tend to the strict interpretation that perhaps there are two jobs in which sex is a "bfoq"---a sperm donor for men and a wet nurse for women. We do not have serious objection to the "for example" listing of actor or actress, but we would strongly recommend that the other example be deleted.

We would also recommend that the paragraph on "public morals" be deleted since such a concept is virtually impossible to define, varies greatly from community to community and could be used as an excuse for continuing patterns of unlawful sex discrimination.

Similarly, on page 2, in the section describing situations which do not constitute a "bfoq" under the guidelines, we strongly recommend the deletion of the last phrase in example "1" so that the sentence reads: "For example, the assumption that the absence or turnover rate among women is higher than among men." There are ample studies available which show that the absence and turnover rate varies very slightly among men and women and that the factors which may cause the variation can frequently be traced directly to prevailing sexist policies of the society. The company "experience" would not be relevant as a defense in support of sex discrimination.

2. Section III: Pre-Employment Practices and Policies

We encourage the Commission to take a strong stand in opposition to discriminatory advertising of jobs. Again, our experience with the Equal Employment Opportunity Commission supports the "strong" approach, because untold hours of commission and staff time were taken up with defending an indefensible position in the early days of the EEOC---"the reasonable" approach to job advertising which permitted employers and employment

agencies to continue listing of jobs in "help wanted male" and "help wanted female" columns of newspapers as long as the specific ad did not carry any sex designation. Newspapers pleaded "convenience of the readers" in continuing a clearly discriminatory practice and provided a "cover" for employers and agencies which chose to evade the law. The FEPC seeks, under these guidelines, to eliminate that practice and we commend you for it. It is important to make clear to newspaper publishers that they can be held responsible for sex discrimination. We would strongly recommend to the Commission that it include a section indicating that the maintenance of "help wanted male" and "help wanted female" columns is a violation of the law unless jobs listed under those categories have been determined to have a valid "bfoq." We would suggest that the Commission survey the newspapers of the State of California to determine which newspapers are still utilizing such columns and inform publishers of such newspapers that they will be considered in violation of the law if the practice is not halted.

C. Qualifications Appraisal

We support the idea that adherence to "uniform" qualifications standards may have negative impact on equal opportunity for all groups. If a "uniform" qualification has the effect of excluding disproportionate numbers of women and/or racial and ethnic minorities, such qualifications should be reevaluated to determine their actual relevance for the job in question. Until the institutional racism and sexism of the society are eliminated, seemingly uniform qualifications may be deterrents in the job market for previously discriminated against groups.

3. Section IV: Maternity Leave, Related Policies

It is commendable that the Commission has recognized the need for eliminating vestiges of discrimination against women in the job market because they may require leave for childbearing purposes. It is also important to recognize the distinction between leave for child bearing and leave for child rearing. Enlightened employers

have accepted the concept that leave for childbearing can be covered under temporary disability benefits. Leave for child rearing is increasingly viewed as a benefit that can be applied to male or female workers. Where an employer's leave policy permits leave for a variety of reasons, employees requesting such leave for child rearing purposes should be permitted to exercise their leave rights regardless of whether the employee is male or female. There is ample legal precedent for this approach and parental leave is gaining more and more converts as people recognize the positive value of husband and wife sharing the early stages of child rearing.

It is particularly important that the Commission establish clear policy on the matter of leave and benefits related to childbearing and child-rearing. Past employer policies have frequently made it impossible for women to maintain continuity of employment and fulfill responsibilities related to the home and family. Minority women, who work in larger percentages than their non-minority sisters, and who are often doubly disadvantaged in the job market because of discrimination based on race as well as discrimination based on sex, are particularly affected by employer policies which fail to provide pregnancy leave and benefits. It is also important for the Commission to encourage employers to support child care centers as a means of providing women with equal opportunity in employment. High quality child care benefits society, children and parents and more incentive to provide such care should be given. It is also obvious that women, who still bear the greatest responsibility for childrearing, cannot be expected to improve their employment opportunities if high quality child care is not available.

4. Section V: Conditions and Policies of Employment

This section of the guidelines should be reworded in several places to substitute the permissive "should" for the more positive "must" when referring to actions by employers, unions and employment agencies to bring about equal opportunity for women in the job market.

5. Section VIII: Affirmative Action

This is a particularly important section because women will be locked into traditional job categories, at low pay scales, without affirmative action on the part of those who control access to employment unless there is a major effort to overcome the effects of past discrimination. To achieve this goal, employers, unions and employment agencies must be encouraged to engage in comprehensive affirmative action. An effective plan for such action is complex and requires expert assistance. It should be based not only on expectations of employment opportunities for women currently in the labor force in the immediate area, but on the projected increase in the number of women who may enter the workforce if true opportunity is extended to women. We strongly recommend that the final sentence in the affirmative action section be deleted. It addresses only one aspect of affirmative action and may suggest to some employers that their goals and timetables should be based on present employment pictures. With a well-designed affirmative action plan, opportunities for women in job classifications in which they are presently grossly underrepresented could be significantly enhanced within a relatively short period of time. We suggest that FEPC staff work to develop guidelines for affirmative action and that major attention be given to adoption of meaningful affirmative action plans by California employers.

Black Women Organized for Action appreciates the opportunity to testify on the proposed guidelines on sex discrimination, and we request that the Commission keep us informed of future activities and programs.